

BOARD OF APPEALS CASE NO. 5302

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BEFORE THE

APPLICANT: Erwin Martin

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ZONING HEARING EXAMINER

REQUEST: Variance to allow cottage housing for
a non-relative living in the second dwelling in the
R1 District; 2154 Sherwood Lane, Havre de Grace

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 10/16/02 & 10/23/02

HEARING DATE: December 16, 2002

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Record: 10/18/02 & 10/25/02

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Erwin Anton Martin, is seeking a variance, pursuant to Section 267-27B(8)(b) of the Harford County Code, to allow cottage housing without a relative living in the second dwelling in an R1 District.

The subject parcel is located at 2154 Sherwood Lane, Havre de Grace, MD 21078-2014 and is more particularly identified on Tax Map 52, Grid 1C, Parcel 47. The subject parcel consists of 9.14 acres, is zoned R1/Urban Residential and is entirely within the Sixth Election District.

Mr. Erwin Anton Martin appeared and testified that he has owned the property since 1968. Mr. Martin explained that he purchased this property after his return from two tours of service in the Vietnam War. He placed a mobile home on the property in 1989 that consists of two travel trailers placed side by side with a common roof. He has had tenants in the mobile home for two years. There is no lease. The Applicant explained that he is a disabled veteran, having suffered wounds to the pelvic area in Vietnam. In November of this past year, the Applicant was struck by a truck, resulting in serious injuries to him. He feels that his age and condition require him to have someone on his property to assist him with maintenance and to help him in the event of an emergency. Mr. Martin described one incident when two Doberman Pinchers knocked him down. He was knocked to the ground and was unable to move for some time. He now has a wireless device connected to the trailer and house to enable him to call his tenant should the need arise. The Applicant has no family that could live on the property. He only wants the variance for his own use and stated that he would need to sell if the request were not granted.

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Mr. Henry Paulick appeared and testified that he has known the Applicant since the 1960's. According to the witness Mr. Martin is 100% disabled and is reluctant to ask for help. The witness believed that it was reasonable to allow a caregiver to live on the property in the mobile home. It would allow privacy and security for the Applicant.

Mr. Anthony McClune appeared as representative of the Department of Planning and Zoning. The Department, in recommending denial of the application found that there was nothing unique about the topography of the property or overall circumstances that would justify a variance like the one requested. The request is really in the nature of a use variance as opposed to an area variance and use variances are held to a higher standard of proof of practical difficulty under Maryland law. While the Department expressed its sympathy for Mr. Martin's situation, Mr. McClune could not find any support for a grant of the request either within the Harford County statute or the Maryland cases that have dealt with variance requests of this nature.

Mr. Victor Richard appeared in opposition to the application. Mr. Richard lives at 2314 Sherwood Lane and testified that this neighborhood is highly regarded and he does not feel that trailers are appropriate anywhere in this area. The house has 8 rooms and, in the opinion of Mr. Richard, should be more than adequate to house a caregiver.

Mr. Donald Mylin, who lives at 2135 Sherwood Lane, appeared and testified that he is opposed to the Application. He is an adjacent property owner and feels that the presence of a trailer is an eyesore in the neighborhood and diminishes property values. The witness described the Applicant's property as a "junk yard" with debris, junk and trash scattered throughout the parcel. Photographs introduced in the file support the witness's statement that there is a great deal of debris on the Applicant's property. The witness is able to see the trailer from his property. Lastly, the witness stated that there was nothing unique about the subject parcel that would require the grant of the requested variance.

Barbara Tubb, who resides at 2162 Sherwood Lane, appeared next in opposition to the application. The witness stated that she can see the trailer from her property and it is, in her opinion, "not nice to look at".

CONCLUSION:

The Applicant, Erwin Anton Martin, is seeking a variance, pursuant to Section 267-27B(8)(b) of the Harford County Code, to allow cottage housing without a relative living in the second dwelling in an R1 District.

Harford County Code Section 267-27B(8)(b) provides:

“Temporary uses. Temporary uses shall be permitted, subject to the following:

B. Specific temporary uses. The temporary uses described below shall be subject to the following:

(8) Cottage houses.

(a) In this Subsection B(8), the following terms have the meanings indicated:

COTTAGE HOUSE -- A temporary second dwelling on a single lot.

DEPARTMENT -- The Department of Planning and Zoning.

DISABILITY -- A disabling physical or mental condition.

RELATIVE -- A grandparent, parent, child, brother, sister, aunt or uncle.

(b) A cottage house is permitted on a single lot in the AG, RR, R1, R2, RO and VR Districts, provided that:

[1] On a lot of 2 acres or less the cottage house is located within a dwelling currently on the lot;

[2] On a lot of more than 2 acres the cottage house may be located within a dwelling currently on the lot or be a mobile home;

[3] If the cottage house is a mobile home, the cottage house meets the setback requirements for transient housing uses, except that in the AG District, the minimum rear yard setback for a mobile home cottage house is 40 feet;

[4] When the cottage house is a mobile home, skirting of a compatible material is substituted for a foundation;

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- [5] The lot owner submits a letter of approval from the Health Department stating that the water and sewer facilities for the cottage house meet Health Department requirements;**
- [6] The lot owner submits a copy of the property deed and any homeowners' association agreement to which the lot is subject;**
- [7] The lot owner lives in 1 of the 2 dwellings on the lot;**
- [8] A relative of the lot owner lives in the other dwelling; and**
- [9] Either the lot owner or the relative:**
 - [a] Is more than 62 years old; or**
 - [b] Has a disability.**
 - (c) If an application for a cottage house permit is based upon a disability of the lot owner or a disability of a relative of the lot owner:**
 - [1] The application shall include a physician's statement documenting the disability;**
 - [2] Every 2 years the lot owner shall submit an additional statement from a physician that documents the lot owner's or relative's continuing disability; and**
 - [3] At least 60 calendar days before the additional statement is due, the Department shall notify the lot owner of the date by which the statement is due.**
 - (d) If the cottage house is visible from a residence on an adjacent parcel, the Department may require the lot owner to plant a screen of evergreen trees or shrubs between the cottage house and the residence. The screen shall be at least 10 feet in depth, and the tree or shrubs shall be at least 2 feet in height at planting and shall be capable of forming a year-round screen within 3 years.**

- (e) A permit is revoked when:

 - [1] The parcel is transferred or assigned;
 - [2] The additional physician's statement required by Subsection B(8)(c) is not submitted by the due date; or
 - [3] The need for the cottage house ends.
- (f) When a permit is revoked, the lot owner shall remove the cottage house within 60 calendar days.
- (g) Use of a cottage house under this Subsection B(8) is not grounds for or evidence of hardship for a variance under § 267-11.
- (h) If the lot owner satisfies the requirements of this Subsection B(8), the Department shall:

 - [1] Issue a permit to the lot owner 21 calendar days after the lot owner satisfies the requirements;
 - [2] Within 7 calendar days after the lot owner satisfies the requirements, post the property which is the subject of the application with a notice that the lot owner has applied for a cottage house permit and has satisfied the permit requirements; and
 - [3] Within 7 calendar days after the lot owner satisfies the requirements, notify by mail each owner of real property adjacent to the lot:
 - [a] That the lot owner has applied for a cottage house permit and has satisfied the permit requirements;
 - [b] That the permit is temporary;
 - [c] That the cottage house must be removed when the permit is revoked under Subsection B(8)(e);

- [d] Of the requirements imposed on the lot owner; and**
- [e] Of any other information the Department deems relevant.”**

Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."**

In the instant case, the Petitioner has failed to show that circumstances exist that are unique to the property itself justifying the requested variance.

The Maryland Court of Special Appeals has provided guidance in matters of variance requests and described a two step analysis in determining whether such requests should be granted. According to the guidance provided by the Court, the variance process is a two step sequential process:

- 1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.**
- 2. The second step is a demonstration whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists.” Cromwell v. Ward, 102 Md. App. 691 (1995).**

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The Hearing Examiner is not unsympathetic to the disabilities of the Applicant and recognizes the substantial need of this Applicant to employ a caregiver that resides on the property. However, the Applicant has a very large home on the property where he resides alone. Testimony indicates that the home has eight rooms, certainly sufficient for the addition of a caregiver. The only reason given for not using the house instead of the trailer as the caregiver's residence, was the Applicant's lack of privacy. Generally speaking, practical difficulty created by the Applicant himself is insufficient to allow the grant of a variance. Anderson v. Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220 (1974). In this case it is the desire of the Applicant to maintain his own privacy and nothing more that would require the requested variance to be granted.

Based on the foregoing, the Hearing Examiner recommends that the request be denied.

Date JANUARY 16, 2003

William F. Casey
Zoning Hearing Examiner